

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS**

In re:
Jason J. Barth,
Debtor.)
) In proceedings under Chapter 13
) Honorable Timothy A. Barnes
)
) Case No. 23-01153
)
)

RESPONSE TO DEBTOR'S AMENDED OBJECTION TO CLAIM 3-2

COMES NOW TD Bank, N.A., successor in interest to TD Auto Finance LLC ("TD Bank"), by counsel, and responds as follows to Debtor's Amended Objection to its claim:

1. TD Bank financed the purchase of a 2019 Chevrolet Silverado on October 16, 2019 with the total payments to be made amount of \$76,464.00 and a lien perfected on the Title to the vehicle. *See* Loan Agreement and Title attached hereto as Exhibits 1 and 2 and incorporated herein by reference.

2. Debtor last made a payment on December 29, 2020.

3. TD Bank contacted Debtor multiple times regarding his failure to make payments, but never spoke with him. Debtor did not contact TD Bank regarding a surrender of the vehicle.

4. Upon information and belief, Debtor abandoned the vehicle on private property and the property owner had the vehicle towed.

5. Notices were sent by the towing company to Debtor and to TD Bank regarding the impound of the vehicle and the potential sale. Exhibit D to Debtor's Amended Objection to Claim, Notice from Dats Towing.

6. The Notices sent to TD Bank were addressed to TD Auto Finance, PO Box 675, Wilmington, OH 45177, which is a payment address. Correspondence sent to payment centers do not reliably or timely get forwarded on to someone who can take appropriate action.

7. The Notice indicated that storage fees of either \$40.00 per day or \$140.00 per day

were accruing on the impounded vehicle.

8. TD Bank filed suit in the Circuit Court of Cook County, Illinois on April 26, 2021, against the towing company to obtain possession of the Vehicle (detinue) and for unjust enrichment, and against Debtor for breach of contract in the amount owed at the time, per the Loan Agreement, in the amount of \$55,697.63, plus fees.

9. TD Bank alleged that the value of the vehicle, at the time, was \$43,400.00.

10. Upon information and belief, the towing company sold the vehicle for \$8,000.00 and kept all of the funds. Thus, the amount of the debt owed to TD Bank was not reduced by the sale proceeds received by the towing company.

11. The State Court proceeding has been stayed due to Debtor's bankruptcy filing.

12. TD Bank was under no requirement to recover the vehicle from the impound lot after its abandonment by Debtor, which would have necessitated TD Bank incurring costs to pay for the impound and storage fees.

13. Section 9-601(a) (former § 9-501) of the Uniform Commercial Code states that a creditor may "reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, ...by any available judicial procedure." *See* 810 ILCS 5/9-601.

14. Courts have consistently found that the creditors' rights conferred in § 9-601 are cumulative and there is no mandate on what avenues must be pursued to recover on the debt owed. *See, e.g., Hill v. Bank of Colorado*, 648 F.2d 1282, 1286 (10th Cir.1981); *In re Kuhn*, 408 B.R. 528, 531-533 (Bankr. D. Kan. 2009); *State Bank of Piper City v. A-Way, Inc.*, 115 Ill. 2d 401, 405–06, 504 N.E.2d 737, 739 (1987).

15. The Loan Agreement also expressly provides that all remedies provided for in the agreement or by law are cumulative. *See* Exhibit 1 Loan Agreement at p. 2, paragraph 9.

16. Lastly, the 1099 indicating a Cancellation of Debt was issued in error and a correct 1099 has now been issued. *See Exhibit 3* and incorporated herein by reference.

WHEREFORE, TD Bank respectfully prays that this Court overrule the Debtor's Amended Objection to this claim.

RIEZMAN BERGER, P.C.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was electronically served using the CM/ECF system to the following on July 12, 2023:

David H Cutler
4131 Main St.
Skokie IL 60076

Attorney for Debtor

Thomas H. Hooper
55 E. Monroe St., Suite 3850
Chicago IL 60603

Chapter 13 Trustee

Office of the United States Trustee
219 S Dearborn St, Room 873
Chicago, IL 60604

I further certify that a copy of the foregoing document was served on the following parties by sending postage prepaid, in the United States Mail, by first-class mail to the following on July 12, 2023:

Jason J. Barth
636 Sycamore Lane
Wheeling IL 60090

/s/ Kathryn A. Klein